

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

Nos. 00-5212, 00-5213

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

MICROSOFT CORPORATION,
Defendant-Appellant.

STATE OF NEW YORK *ex rel.*
ELIOT SPITZER, *et al.*,
Plaintiffs-Appellees,

v.

MICROSOFT CORPORATION,
Defendant-Appellant.

**MOTION OF THE SOFTWARE AND INFORMATION INDUSTRY
ASSOCIATION FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE*
IN SUPPORT OF PLAINTIFFS**

Pursuant to this Court's Order dated October 11, 2000, Fed. R. App. P. 29(a), and D.C. Cir. R. 29, the Software & Information Industry Association (SIIA) moves for leave to file a brief *amicus curiae* supporting appellees in these matters. Although the United States and the plaintiff States have consented to the filing of *amicus curiae* in these matters, appellant Microsoft has not.

1. The Software & Information Industry Association is the principal trade association of the software code and information content industries. SIIA represents more than 1,000 leading high-tech companies that develop and market software and electronic content for business, education,

consumers and the Internet. Formed on January 1, 1999, through the merger of the 15-year-old Software Publishers Association (SPA) and the 30-year-old Information Industry Association, SIIA leads industry efforts in e-business, copyright, privacy, taxation and other public policy issues; it is the only trade association with a global reach that provides a credible, unifying voice for all businesses that provide the software and information that underpin the digital economy. SIIA's website is at www.siiia.net.

2. SIIA filed *amicus* briefs in the district court at both the liability and the remedy stages. The first, liability stage, brief was filed at the invitation of the United States. Although Microsoft at that time was a member of SIIA — and a member of the SIIA Board of Directors — Microsoft resigned from SIIA and withdrew its funding after SIIA filed that brief, which criticized Microsoft's conduct. In the second brief, at the remedy stage, SIIA, joined by the Computer & Communications Industry Association (CCIA), explained industry views on the proposed remedy in a brief described by the district judge in open court as "excellent." 5/24/00 (a.m.) Tr. 28.

3. SIIA, again joined by CCIA, also filed an *amicus* brief supporting jurisdiction in the Supreme Court. All parties consented to the filing of that brief.

4. SIIA and its members have a vital interest in the outcome of this proceeding because the future structure of the computer software industry and of Internet computing — and the range of conduct that the law permits within it — will determine to a substantial extent whether they thrive in a fair, innovative, and competitive environment.

5. The views of members of the computer and software industry should assist the Court as it considers the appropriateness of the lower court's rulings. In particular, the Court is likely to benefit from the technical and business expertise in the software industry that SIIA and its members

possess, and their ability to explain to this Court the real-world competitive impact that various technical arguments raised in this litigation might have.

6. The details of the *amicus* brief that SIIA will file if this Motion is granted will, of course, depend to a significant extent on the arguments advanced and statements made in Microsoft's opening brief. SIIA expects to address the relation between software technology and the competitive significance of the product configuration conduct that is at issue in this case, the practical competitive effects of the other business practices in light of the realities of the software industry, the appropriate antitrust analysis to be applied to those issues, and the appropriate remedial response. Because the relation between the technical issues involved in this proceeding and competition in the software industry is intricate, SIIA and its members believe that a more complete airing of the issues is likely to benefit this Court in assessing Microsoft's conduct under the antitrust laws.

7. The Court has wisely rejected Microsoft efforts to limit the participation of affected parties in this proceeding of nearly unprecedented national economic importance. Microsoft's original request asked this Court to confine the views of the rest of the world of software producers and consumers to a collective total of 7,000 words as against 225,000 words for Microsoft, proportions that roughly duplicate its market share in the operating systems market. Whatever this Court may ultimately decide about the legal status of Microsoft's operating systems monopoly and its efforts to entrench that dominance, the Court should not permit Microsoft an effective monopoly over the views presented by the software industry and other interested parties to this Court. SIIA will endeavor to coordinate with any other *amici* supporting the plaintiffs to avoid duplication of arguments or unnecessary proliferation of briefs.

CONCLUSION

For the foregoing reasons, the Motion for Leave to File Brief as *Amicus Curiae* should be granted.

Dated: October 25, 2000

Respectfully submitted,



Ken Wasch
President
*Software & Information
Industry Association (SIIA)
1730 M Street, N.W. Suite 700
Washington, D.C. 20001*



Donald M. Falk
*Mayer, Brown and Platt
1909 K Street, NW
Washington, D.C. 20001*

CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

The Software & Information Industry Association is a trade association representing the interests of more than 1,000 firms in the software, information content and Internet industry, which leads industry efforts in e-business, copyright, privacy, taxation and other public policy issues. It has no shareholders or other owners.



Ken Wasch
President
*Software & Information
Industry Association (SIIA)
1730 M Street, N.W. Suite 700
Washington, D.C. 20001*

CERTIFICATE OF SERVICE

I hereby certify that on this 25 day of October, 2000, I caused a true and correct copy of the foregoing Motion of the Software & Information Industry Association for Leave to File Brief as *Amicus Curiae* in Support of Plaintiffs to be served by facsimile and overnight delivery, postage prepaid, upon:

John L. Warden, Esq.
Richard J. Urowsky, Esq.
Steven L. Holley
SULLIVAN & CROMWELL
125 Broad Street
New York, NY 10004
Fax: (212) 558-3588

Richard L. Schwartz, Esq.
Deputy Chief, Antitrust Bureau
NEW YORK STATE ATTORNEY GENERAL'S OFFICE
120 Broadway, Suite 2601
New York, NY 10271
Fax: (212) 416-6015

A. Douglas Melamed, Esq.
Acting Assistant Attorney General
Antitrust Division
U.S. DEPARTMENT OF JUSTICE
950 Pennsylvania Avenue N.W.
Washington, D.C. 20530
Fax: (202) 514-6543

and by overnight delivery, postage prepaid, upon:

William H. Neukom, Esq.
David A. Heiner, Jr.
Thomas W. Burt
Christopher Joseph Meyers
MICROSOFT CORPORATION
One Microsoft Way
Redmond, WA 98052


